CF0000062176

(02)

समक्ष माननीय उच्च न्यायालय जबलपुर, मध्य प्रदेश

क्रिमिनल अपील नं॰ 785 / 99

अपीलार्थी :- जोहरीनबाई उर्फ श्री मती बाई पति
जेल में बुधियार साय चौहान आयु 50 वर्ष निवासी
ग्राम - बड़ा मावा थाना बाग बहार
जिला- राय गढ़ (म0 प्र0)

17/3/99
Advocate

-: विरुद्ध :-

Rto. A. P.

प्रति अपीलार्थी :- मध्य प्रदेश शासन द्वारा आरक्षी केन्द्र
बाग बहार जिला रायगढ़ (म0प्र0)

(24) A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.785/1999

Loharin Bai

-Versus-

State of Chhattisgarh

Judgment for consideration

Sd/-
Dilip Raosaheb Deshmukh
Judge

Hon'ble Shri Justice Fakhruddin

20

Sd/-
Fakhruddin
Judge

Post for : 12.09.2005

Sd/-
Judge
11.09.2005

(25)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.785/1999

Loharin Bai

-Versus-

State of Chhattisgarh

CORAM: HON'BLE SHRI FAKHRUDDIN,
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, JJ

Miss Sofia Khan for the appellant.

Shri Akhil Mishra, P.L. and Shri Ravindra Agrawal, P.L. for the State.

J U D G M E N T
(Delivered on .09.2005)

Per Dilip Raosaheb Deshmukh, J.

This appeal is directed against the judgment dated 18.02.1999 delivered by Shri Ajit Singh, 1st Additional Sessions Judge, Raigarh in sessions trial No.45/98 whereby the appellant-Loharin Bai was convicted under Section 302 for committing murder of her husband Budhiyar Sai by throwing boiling starch on his body and sentenced to imprisonment for life.

2. It is not disputed that the appellant is the widow of the deceased-Budhiyar Sai. Budhiyar Sai had sustained burn injuries on the head, shoulder and chest. Budhiyar Sai had died about 25 days after sustaining the burn injuries. No report was lodged regarding the occurrence by Budhiyar Sai. The dead body of Budhiyar Sai was cremated by Dhan Sai P.W.7 and Son Sai P.W.8. The police had dug out the dead body of Budhiyar Sai and prepared Panchnama vide Ex.P.4 on 17.09.1997.

3. Briefly stated the prosecution story is that on 13.07.1997 the appellant-Loharin Bai threw boiling starch on the body of her husband-Budhiyar Sai. Budhiyar Sai sustained burn injuries and blisters on his head, shoulder and chest. No report of the occurrence was lodged by Budhiyar Sai. On 7.8.1997 Budhiyar Sai expired. His body was cremated by Dhan Sai P.W.7 and Son Sai P.W.8. On 11.08.1997 some villagers of village Khadamacha lodged a report to the S.D.O. F.I.R. was registered on 5.9.1997 at Police Station Bagbahara, Dist. Raigarh. The dead body of Budhiyar Sai was exhumed and Panchnama was prepared vide Ex.P.4. The body had fully decomposed. The exhumed skeleton of Budhiyar Sai was examined by Dr. L. Banoda P.W.4 who did not find any marks of injury over the bones or on the skull. No definite opinion could be given regarding the cause of death vide Ex.P.6. After completion of investigation, the appellant was prosecuted under Section 302 I.P.C. along with two co-accused Nandlal and Bikul Sai who were alleged to have secretly cremated the dead body of Budhiyar Sai in order to cause disappearance of evidence of murder.

4. Charge under section 302 read with Section 34 and 201 read with Section 34 of the I.P.C. was framed against the appellant and the two co-accused. The appellant and the two co-accused abjured their guilt. The prosecution examined as many as 10 witnesses. The trial Court relying upon the evidence led by the prosecution convicted the appellant under Section 302 I.P.C. for committing murder of her husband-Budhiyar Sai by throwing boiling starch on her body. It, however, acquitted the appellant from the charge

under section 201/34 of the I.P.C. and also acquitted co-accused Nandlal and Bikul Sai since there was not even an iota of evidence against them as well as against the appellant to show that they had secretly cremated the dead body of Budhiyar Sai to cause disappearance of the evidence of murder.

5. Learned counsel for the appellant has contended that prosecution has failed to establish the guilt of the appellant under Section 302 I.P.C. There was absolutely no evidence on record to show that Budhiyar Sai had expired as a result of burn injuries sustained by him. There was also no evidence to show that Budhiyar Sai had suffered severe bodily pain or was unable to follow his ordinary pursuits for 20 days after sustaining the burn injuries. It was contended in the alternative that at the most the act of the appellant fell within section 324 of the I.P.C. On the other hand, learned counsel for the State has argued in favour of the impugned judgment.

6. We have heard the rival contentions and also perused the record. Three questions mainly arise for determination in this case, which are as follows:

A) (i) Whether the appellant had thrown boiling starch on Budhiyar Sai due to which he had sustained burn injuries?

(ii) If yes, whether death of Budhiyar Sai was caused as a result of burn injuries?

(iii) If not, whether injury sustained by Budhiyar Sai was grievous in nature?

B) What offence, if any, was committed by the appellant?

7. Scanning the prosecution evidence within the parameters of the above points for determination we find that Amar Sai P.W.1 has

stated that after sustaining the burn injuries due to throwing of hot starch on his body, Budhiyar Sai had moved in the entire locality of the village and next day had told him that his wife had thrown hot starch on him, due to which, he had sustained burn injury on the head, left shoulder and chest. This testimony is corroborated by Gopala P.W.2 who had deposed that he had seen the burn injuries on the head and chest of Budhiyar Sai who ran towards and dipped inside the village tank to cool down. Dhan sai P.W.7 has deposed that Budhiyar Sai was ill and had fever. On being informed that the appellant had thrown starch on Budhiyar Sai, he alongwith Son Sai P.W.8 had gone to see Budhiyar Sai who told him that his wife had thrown hot starch on him. He had seen burn injuries on the face, neck and chest of Budhiyar Sai. Son Sai P.W.8, Duryodhan P.W.9 and Kamal Sai P.W.10 also corroborate the above version. All the above mentioned witnesses have testified that Budhiyar Sai died after about three weeks from the occurrence. However, there is absolutely no evidence on record to show that Budhiyar Sai died as a result of burn injuries sustained by him. No report of the occurrence was lodged by Budhiyar Sai. There is absolutely no evidence on record to show the extent of burn injuries sustained by Budhiyar Sai. The evidence led by the prosecution does not show whether the burn injuries sustained by Budhiyar Sai were extensive or were superficial. Kamal Sai P.W.10 has deposed that Budhiyar Sai did not even go to the hospital. The appellant has in her examination under Section 313 Cr.P.C. stated that Budhiyar Sai was ill and died on account of illness after one month and not due to burns.

8. Thus, it emerges from the evidence led by the prosecution that Budhiyar Sai did not lodge any report of the occurrence. He did not undergo any treatment and also did not go to the hospital. The evidence led by the prosecution does not show the nature and extent of burn injuries. The testimony of Dhan Sai P.W.7 and Gopala P.W.2 do not show the extent of burn injuries sustained by Budhiyar Sai in the throat and chest. Amar Sai P.W.1 does not speak about any burn injury sustained by Budhiyar Sai in throat. On the other hand, Dhan Sai P.W.7 does not speak about any burn injury sustained by Budhiyar Sai on the left shoulder. The testimony of Duryodhan P.W.9 does not show that Budhiyar Bai had sustained any burn injury on his chest. Kamal Sai P.W.10 has testified that Budhiyar Sai had sustained burn injury in the leg whereas no other witness has deposed to that extent. Thus, the evidence relating to the burn injury sustained by Budhiyar Sai is also contradictory. Dhan Sai P.W.7 and Son Sai P.W.8 had gone to the extent of saying that upon information of death of Budhiyar Sai being sent to the police station, the police had asked them to cremate the dead body whereupon they had cremated the dead body of Budhiyar Sai. This reflects that the police had information about the occurrence and the death of Budhiyar Sai but no offence was registered. On the contrary, the dead body of Budhiyar Sai was cremated on being directed by the police.

9. Having given our thoughtful consideration to the evidence led by the prosecution, we are of considered opinion that the prosecution has been able to establish only that on 13.07.1997 the appellant had thrown hot starch on Budhiyar Sai due to which he

had sustained some burn injuries. There is absolutely no evidence on record to indicate that Budhiyar Sai died as a result of the burn injuries. There is absolutely no medical evidence in the present case to show that death of Budhiyar Sai was homicidal or that it was caused due to the burn injuries sustained by him. In the absence of any proof that death of Budhiyar Sai was caused due to burn injuries, the prosecution has failed to establish that the appellant had committed culpable homicide. In the absence of any evidence, it cannot be inferred that Budhiyar Sai was labouring under a disorder, disease or bodily infirmity and the burn injuries accelerated his death. Thus, the case does not fall either under Explanation No.1 or Explanation No.2 of Section 299 of the I.P.C. The prosecution has thus failed to establish the charge under Section 302 I.P.C. against the appellant.

10. The only question that now remains to be considered is what offence was committed by the appellant. It is established by the prosecution, as discussed above, that the appellant had thrown hot starch on the body of Budhiyar Sai due to which he had sustained some burn injuries. Section 320 of the I.P.C. defines grievous hurt as follows:

> **"320. Grievous hurt:**-- The following kinds of hurt only are designated as "grievous":--
>
> *First.*--- Emasculation.
>
> *Secondly.*--- Permanent privation of the sight of either eye.
>
> *Thirdly.*--- Permanent privation of the hearing of either ear.
>
> *Fourthly.*--- Privation of any member or joint.
>
> *Fifthly.*—Destruction or permanent impairing of the powers of any member of joint.

> *Sixthly.*--- Permanent disfiguration of the head or face.
>
> *Seventhly.*--- Fracture or dislocation of a bone or tooth.
>
> *Eighthly.*--- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

In the absence of any evidence that the burn injuries had endangered the life of Budhiyar Sai or that he had suffered severe bodily pain or was unable to follow his ordinary pursuits for a period of 20 days, it cannot be said that the injuries sustained by Budhiyar Sai were grievous in nature. Since the appellant had caused hurt voluntarily by means of hot starch which is a heated substance to Budhiyar Sai, the offence committed by the appellant thus squarely fell under Section 324 of the I.P.C.

11. In the result, the appeal is partly allowed. The conviction of the appellant under Section 302 I.P.C. is set aside. The appellant is convicted for an offence under Section 324 of the I.P.C. and sentenced to undergo rigorous imprisonment for three years. The appellant is in jail since 22.2.1997 i.e. eight years and six months. On 14.6.2004 she was ordered to be released on bail. However, the appellant did not furnish bail bond. Since the appellant has already undergone the sentence she shall be set at liberty forthwith, if not required in any other case.

12. Before parting, we appreciate the valuable legal assistance rendered by Miss Sofia Khan, learned counsel for the appellant and Shri Akhil Mishra & Shri Ravindra Agrawal, Panel Lawyers for the State.

Sd/-
Fakhruddin
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge